



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**21-ORD-243**

December 7, 2021

In re: Matt Tucker/LaRue County Detention Center

**Summary:** The LaRue County Detention Center (“Detention Center”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), when it charged an excessive fee that did not match the Detention Center’s actual costs, as required by KRS 61.874(3).

***Open Records Decision***

On August 30, 2021, Matt Tucker (“Appellant”) requested a copy of the Detention Center’s “Commissary account payable/receivable from Jan[uary] 2020 to present.” The Appellant indicated that his request was not for a commercial purpose. In response, the Detention Center stated that the Appellant must pay a fee of \$127.06 before receiving the records, after which he would be charged separately for postage. This appeal followed.

Under KRS 61.880(4), a person requesting records may appeal to the Attorney General if he believes “the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees.” The Act provides that a “public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required.” KRS 61.874(3).

Under KRS 61.880(2)(c), the burden is on the public agency to sustain its actions. To meet its burden here, the Detention Center must substantiate

the costs it actually incurred to make copies of the requested records. When asked to do so by this Office, the Detention Center stated that it charged an hourly rate for employee time plus 50 cents per page for copies totaling 23 pages.

KRS 61.874(3) expressly prohibits a public agency from charging for staff costs to fulfill a noncommercial request for records. Furthermore, the Kentucky Court of Appeals has held that ten cents per page is a reasonable copying charge under the Act. *Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). This Office has consistently found that any copying charge above ten cents per page is excessive unless the agency can substantiate that its actual cost is greater than that amount.<sup>1</sup> *See, e.g.*, 19-ORD-062; 08-ORD-021; 01-ORD-136; 94-ORD-77. Here, the Detention Center has failed to demonstrate that its actual cost of reproduction, calculated under KRS 61.874(3), exceeds ten cents per page. Therefore, the reasonable fee for copying 23 pages is \$2.30, and any fee greater than this, other than the actual cost of postage to mail the records, is excessive. Accordingly, this Office finds that the Detention Center subverted the intent of the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

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<sup>1</sup> The only exception is when a statute expressly authorizes a particular agency to charge a higher fee for copies. *See, e.g.*, KRS 64.019(2)(a) (authorizing county clerks to charge up to 50 cents per page for copies of public records). The Detention Center has not identified any such statute that applies here.

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Distributed to:

Mr. Matt Tucker  
Kyle W. Williamson, Esq.  
James Underwood, Jailer